

106TH CONGRESS
2D SESSION

H. R. 3767

To amend the Immigration and Nationality Act to make improvements to, and permanently authorize, the visa waiver pilot program under section 217 of such Act.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2000

Mr. SMITH of Texas (for himself, Ms. JACKSON-LEE of Texas, Mr. MCCOLLUM, Mr. GOODLATTE, Mr. CANADY of Florida, Mr. FRANK of Massachusetts, and Mr. SCARBOROUGH) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to make improvements to, and permanently authorize, the visa waiver pilot program under section 217 of such Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Visa Waiver Perma-
5 nent Program Act”.

1 **TITLE I—PERMANENT PROGRAM**
2 **AUTHORIZATION**

3 **SEC. 101. ELIMINATION OF PILOT PROGRAM STATUS.**

4 (a) IN GENERAL.—Section 217 of the Immigration
5 and Nationality Act (8 U.S.C. 1187) is amended—

6 (1) in the section heading, by striking “PILOT”;

7 (2) in subsection (a)—

8 (A) in the subsection heading, by striking
9 “PILOT”;

10 (B) in the matter preceding paragraph (1),
11 by striking “pilot” both places it appears;

12 (C) in paragraph (1), by striking “pilot
13 program (as defined in subsection (e))” and in-
14 serting “program”;

15 (3) in subsection (b), in the matter preceding
16 paragraph (1), by striking “pilot”;

17 (4) in subsection (c)—

18 (A) in the subsection heading, by striking
19 “PILOT”;

20 (B) in paragraph (1), by striking “pilot”;

21 (C) in paragraph (2)—

22 (i) by striking “subsection (g)” and
23 inserting “subsection (f)”; and

24 (ii) by striking “pilot”;

25 (D) in paragraph (3)—

1 (i) in the matter preceding subpara-
2 graph (A), by striking “(within the pilot
3 program period)”;

4 (ii) in subparagraph (A), in the mat-
5 ter preceding clause (i), by striking “pilot”
6 both places it appears;

7 (iii) in subparagraph (B), by striking
8 “pilot”;

9 (5) in subsection (e)—

10 (A) in the matter preceding subparagraph
11 (A), by striking “pilot”;

12 (B) in subparagraph (B), by striking
13 “pilot”;

14 (6) by striking subsection (f) and redesignating
15 subsection (g) as subsection (f); and

16 (7) in subsection (f) (as so redesignated)—

17 (A) in paragraph (1)(A) by striking
18 “pilot”;

19 (B) in paragraph (1)(C), by striking
20 “pilot”;

21 (C) in paragraph (2)(A), by striking
22 “pilot” both places it appears;

23 (D) in paragraph (3), by striking “pilot”;

24 and

1 (E) in paragraph (4)(A), by striking
 2 “pilot”.

3 (b) CONFORMING AMENDMENT.—Clause (iv) of sec-
 4 tion 212(a)(7)(B) of the Immigration and Nationality Act
 5 (8 U.S.C. 1182(a)(7)(B)(iv)) is amended—

6 (1) in the clause heading by striking “PILOT”;
 7 and

8 (2) by striking “pilot”.

9 **TITLE II—PROGRAM** 10 **IMPROVEMENTS**

11 **SEC. 201. EXTENSION OF RECIPROCAL PRIVILEGES.**

12 Section 217(a)(2)(A) of the Immigration and Nation-
 13 ality Act (8 U.S.C. 1187(a)(2)(A)) is amended by insert-
 14 ing “, either on its own or in conjunction with one or more
 15 other countries that are described in subparagraph (B)
 16 and that have established with it a common area for immi-
 17 gration admissions,” and “to extend)”.

18 **SEC. 202. MACHINE READABLE PASSPORT PROGRAM.**

19 (a) REQUIREMENT OF ALIEN.—Section 217(a) of the
 20 Immigration and Nationality Act (8 U.S.C. 1187(a)) is
 21 amended—

22 (1) by redesignating paragraphs (3) through
 23 (7) as paragraphs (4) through (8), respectively; and

24 (2) by inserting after paragraph (2) the fol-
 25 lowing:

1 “(3) MACHINE READABLE PASSPORT.—On and
2 after October 1, 2002, the alien at the time of appli-
3 cation for admission is in possession of a valid unex-
4 pired machine-readable passport that satisfies the
5 internationally accepted standard for machine read-
6 ability.”.

7 (b) REQUIREMENT OF COUNTRY.—Section 217(c) of
8 the Immigration and Nationality Act (8 U.S.C. 1187(c))
9 is amended to read as follows:

10 “(B) MACHINE READABLE PASSPORT PRO-
11 GRAM.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), the government of the country certifies
14 that it issues to its citizens machine-read-
15 able passports that satisfy the inter-
16 national accepted standard for machine
17 readability.

18 “(ii) DEADLINE FOR COMPLIANCE
19 FOR CERTAIN COUNTRIES.—In the case of
20 a country designated as a program country
21 under this subsection prior to May 1,
22 2000, as a condition on the continuation of
23 that designation, the country—

24 “(I) shall certify, not later than
25 October 1, 2000, that it has a pro-

1 gram to issue machine-readable pass-
2 ports to its citizens not later than Oc-
3 tober 1, 2001; and

4 “(II) shall satisfy the require-
5 ment of clause (i) not later than Octo-
6 ber 1, 2001.”.

7 **SEC. 203. DENIAL OF PROGRAM WAIVER BASED ON**
8 **GROUND OF INADMISSIBILITY.**

9 (a) IN GENERAL.—Section 217(a) of the Immigra-
10 tion and Nationality Act (8 U.S.C. 1187(a)), as amended
11 by section 202, is further amended by adding at the end
12 the following:

13 “(9) AUTOMATED SYSTEM CHECK.—The iden-
14 tity of the alien has been checked using an auto-
15 mated electronic database containing information
16 about the inadmissibility of aliens to uncover any
17 grounds on which the alien may be inadmissible to
18 the United States, and no such ground has been
19 found.”.

20 (b) VISA APPLICATION SOLE METHOD TO DISPUTE
21 DENIALS OF WAIVER BASED ON GROUND OF INADMIS-
22 SIBILITY.—Section 217 of the Immigration and Nation-
23 ality Act (8 U.S.C. 1187), as amended by section
24 101(a)(6), is amended by adding at the end the following:

1 “(g) VISA APPLICATION SOLE METHOD OF DIS-
 2 PUTING GROUND OF INADMISSIBILITY FOUND IN AUTO-
 3 MATED SYSTEM.—In the case of an alien denial a waiver
 4 under the program by reason of a ground of inadmis-
 5 sibility uncovered through a written or verbal statement
 6 by the alien or a use of an automated electronic database
 7 required under subsection (a)(9), the alien may apply for
 8 a visa at an appropriate consular office outside the United
 9 States. There shall be no other means of administrative
 10 or judicial review of such a denial, and no court or person
 11 otherwise shall have jurisdiction to consider any claim at-
 12 tacking the validity of such a denial.”.

13 (c) PAROLE AUTHORITY.—Section 212(d)(5) of the
 14 Immigration and Nationality Act (8 U.S.C. 1182(d)(5))
 15 is amended—

16 (1) in subparagraph (A), by striking “subpara-
 17 graph (b)” and inserting “subparagraph (B) or
 18 (C)”; and

19 (2) by adding at the end the following:

20 “(C) The Attorney General may not parole
 21 into the United States an alien who has applied
 22 under section 217 for a waiver of the visa re-
 23 quirement, and has been denied such waiver by
 24 reason of a ground of inadmissibility uncovered
 25 through a written or verbal statement by the

alien or a use of an automated electronic database required under section 217(a)(9), unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States.”.

SEC. 204. EVALUATION OF EFFECT OF COUNTRY’S PARTICIPATION ON LAW ENFORCEMENT AND SECURITY.

(a) INITIAL DESIGNATION.—Section 217(c)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(C)) is amended to read as follows:

“(C) LAW ENFORCEMENT AND SECURITY INTERESTS.—The Attorney General, in consultation with the Secretary of State—

“(i) evaluates the effect that the country’s designating would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States);

“(ii) determines that such interests would not be compromised by the designation of the country; and

1 “(iii) submits a written report to the
2 Committee on the Judiciary of the United
3 States House of Representatives and of the
4 Senate regarding the country’s qualifica-
5 tion for designation that includes an expla-
6 nation of such determination.”.

7 (b) CONTINUATION OF DESIGNATION.—Section
8 217(c) of the Immigration and Nationality Act (8 U.S.C.
9 1187(c)) is amended by adding at the end the following:

10 “(5) WRITTEN REPORTS ON CONTINUATION
11 QUALIFICATIONS; DESIGNATION RESCISSIONS.—

12 “(A) PERIODIC EVALUATIONS.—The Attor-
13 ney General, in consultation with the Secretary
14 of State, periodically (but not less than once
15 every 5 years)—

16 “(i) shall evaluate the effect of each
17 program country’s continued designation
18 on the law enforcement and security inter-
19 ests of the United States (including the in-
20 terest in enforcement of the immigration
21 laws of the United States);

22 “(ii) shall determine whether any such
23 designation ought to be continued or re-
24 scinded under subsection (d); and

1 “(iii) shall submit a written report to
2 the Committee on the Judiciary of the
3 United States House of Representatives
4 and of the Senate regarding the continu-
5 ation or rescission of the country’s des-
6 ignation that includes an explanation of
7 such determination and the effects de-
8 scribed in clause (i).

9 “(B) AUTOMATED RESCISSION.—On and
10 after October 1, 2005, any program country
11 with respect to a report described in subpara-
12 graph (A)(iii) has not been submitted in accord-
13 ance with such subparagraph during the pre-
14 ceding 5 years shall be treated as if its designa-
15 tion had been rescinded under subsection (d).

16 “(C) EMERGENCY RESCISSION.—

17 “(i) IN GENERAL.—In the case of a
18 program country in which an emergency
19 occurs that the Attorney General, in con-
20 sultation with the Secretary of State, de-
21 termines the law enforcement or security
22 interests of the United States (including
23 the interest in enforcement of the immigra-
24 tion laws of the United States), the Attor-
25 ney General shall immediately rescind the

1 designation of the country as a program
2 country.

3 “(ii) DEFINITION.—For purposes of
4 clause (i), the term ‘emergency’ means—

5 “(I) the overthrow of a democrat-
6 ically elected government;

7 “(II) war (including undeclared
8 war, civil war, or other military activ-
9 ity);

10 “(III) disruptive social unrest;

11 “(IV) a severe economic or finan-
12 cial crisis; or

13 “(V) any other extraordinary
14 event that threatens the law enforce-
15 ment or security interests of the
16 United States (including the interest
17 in enforcement of the immigration
18 laws of the United States).

19 “(D) TREATMENT OF RESCISSION.—For
20 purposes of this section, a country whose des-
21 ignation is rescinded under subsection (d) or
22 subparagraphs (B) or (C), and the nationals of
23 such country, shall subsequently be treated as
24 if such designation had never been granted, and
25 the country may be designated again under

1 paragraphs (1) and (2) on the same basis as
2 any country that has never previously been des-
3 ignated.”.

4 **SEC. 205. USE OF INFORMATION TECHNOLOGY SYSTEMS.**

5 (a) IN GENERAL.—Section 217 of the Immigration
6 and Nationality Act (8 U.S.C. 1187), as amended by sec-
7 tion 203(b)(2), is further amended by adding at the end
8 the following:

9 “(h) USE OF INFORMATION TECHNOLOGY SYS-
10 TEMS.—

11 “(1) AUTOMATED ENTRY-EXIT CONTROL SYS-
12 TEM.—

13 “(A) SYSTEM.—Not later than October 1,
14 2001, the Attorney General shall develop and
15 implement a fully automated entry and exit
16 control system that will collect a record of ar-
17 rival and departure for every alien who arrives
18 by sea or air at a port of entry into the United
19 States and is provided a waiver under the pro-
20 gram.

21 “(B) REQUIREMENTS.—The system under
22 subparagraph (A) shall satisfy the following re-
23 quirements:

24 “(i) DATE COLLECTION BY CAR-
25 RIERS.—Not later than October 1, 2001,

1 the records of arrival and departure de-
2 scribed in subparagraph (A) shall be
3 based, to the maximum extent practicable,
4 on passenger data collected and electroni-
5 cally transmitted to the automated entry
6 and exit control system by each carrier
7 that has an agreement under subsection
8 (a)(4).

9 “(ii) DATA PROVISION IN CARRIERS.—
10 Not later than October 1, 2002, no waiver
11 may be provided under this section to an
12 alien arriving by sea or air at a port of
13 entry into the United States on a carrier
14 unless the carrier is electronically trans-
15 mitting to the automated entry and exit
16 control system passenger data determined
17 by the Attorney General to be sufficient to
18 permit the Attorney General to carry out
19 this paragraph.

20 “(iii) CALCULATION.—The system
21 shall contain sufficient data to permit the
22 Attorney General to calculate, for each
23 program country and each fiscal year, the
24 portion of nationals of that country who
25 are described in subparagraph (A) and for

whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

“(C) REPORTING.—

“(i) PERCENTAGE OF NATIONALS LACKING DEPARTURE RECORD.—Not later than January 30 of each year (beginning with the year 2003), the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year.

“(ii) SYSTEM EFFECTIVENESS.—Not later than October 1, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

“(I) The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed

1 and implemented under this para-
2 graph.

3 “(II) The recommendations of
4 the Attorney General regarding the
5 use of the calculation described in
6 subparagraph (B)(iii) as a basis for
7 evaluating whether to rescind or con-
8 tinue the designation of a country as
9 a program country.

10 “(2) AUTOMATED DATA SHARING SYSTEM.—

11 “(A) SYSTEM.—The Attorney General and
12 the Secretary of State shall develop and imple-
13 ment an automated data sharing system that
14 will permit them to share data in electronic
15 form from their respective records systems re-
16 garding the admissibility of aliens who are na-
17 tionals of a program country.

18 “(B) REQUIREMENTS.—The system under
19 subparagraph (A) shall satisfy the following re-
20 quirements:

21 “(i) SUPPLYING INFORMATION TO IM-
22 MIGRATION OFFICERS CONDUCTING IN-
23 SPECTIONS AT PORTS OF ENTRY.—Not
24 later than October 1, 2002, the system
25 shall enable immigration officers con-

ducting inspections at ports of entry under section 235 to obtain from the system, with respect to aliens seeking a waiver under the program—

“(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

“(II) information on whether the alien who ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

“(ii) SUPPLYING PHOTOGRAPHS OF INADMISSIBLE ALIENS.—The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

“(iii) MAINTAINING RECORDS OF APPLICATIONS FOR ADMISSION.—The system shall maintain, for a minimum of 10 years, information about each application for ad-

1 mission made by an alien seeking a waiver
2 under the program, including the following:

3 “(I) The name of each immigra-
4 tion officer conducting the inspection
5 of the alien at the port of entry.

6 “(II) Any information described
7 in clause (i) that is obtained from the
8 system by any such officer.

9 “(III) The results of the applica-
10 tion.”.

11 (b) CONFORMING AMENDMENT.—Section 217(e)(1)
12 of the Immigration and Nationality Act (8 U.S.C.
13 1187(e)(1)) is amended—

14 (1) in subparagraph (B), by striking “and” at
15 the end;

16 (2) in subparagraph (C), by striking the period
17 at the end and inserting “, and”; and

18 (3) by adding at the end the following:

19 “(D) to collect, provide, and share pas-
20 senger data as required under subsection
21 (h)(1)(B).”.

○